

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

THE FOX GROUP, INC.,

FILED

DEC 30 2010

CLERK, US DISTRICT COURT
NORFOLK, VA

Plaintiff,

v.

ACTION NO. 2:10cv314

CREE, INC.,

Defendant.

ORDER

This matter comes before the court on Cree Inc.'s ("Cree") Motion to Reschedule Trial Date ("Motion"). Trial in this case is currently scheduled to commence on July 11, 2011. Cree requests that the trial be rescheduled on or after August 8, 2011, in order to permit Charles Verhoeven of Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel") to serve as lead trial counsel. The Fox Group, Inc. opposes the Motion. For the reasons set forth herein, the Motion is DENIED.

In support of its Motion, Cree represents that Mr. Verhoeven is lead trial counsel in this case and in DDB Technologies, LLC v. Yahoo! Inc., No. 1:10-cv-273-JRN (W.D. Tex.), a case currently pending in the Western District of Texas.¹ Cree also represents that "shortly before the scheduling order in this case," the

¹ On November 8, 2010, that case was consolidated with several other cases under DDB Technologies, LLC v. ESPN, Inc., et al., 1:10-cv-246-JRN (W.D. Tex.). See Order, DDB Tech., LLC v. Yahoo! Inc., 1:10-cv-273-JRN (W.D. Tex. Nov. 8, 2010), ECF No. 22; infra note 2.

Western District of Texas case was sua sponte set for a final pre-trial conference on July 7, 2011, and "[p]ursuant to the local practice in the Western District of Texas, trial usually is the following Monday after the final pre-trial conference." Motion ¶ 4. First, this court has admitted Mr. Verhoeven pro hac vice in this case, but he does not appear as counsel of record in the Western District of Texas case.² Additionally, notwithstanding local practice in the Western District of Texas, a trial date has not been set in that matter, whereas here, a scheduling order issued on November 23, 2010, setting trial for July 11, 2011. This specific trial date was set at the specific request of counsel in this case, and beyond the date for trial in this court's Rule 26(f) Pretrial Order.³ Moreover, Cree has sufficient, qualified counsel to litigate this matter without Mr. Verhoeven. Cree retained local counsel from one of this area's largest law firms, as well as Quinn Emanuel. Three other attorneys from Quinn Emanuel are admitted in this case, and Mr. Verhoeven is not the only attorney practicing patent law in Quinn Emanuel.⁴ Mr. Verhoeven will simply have to

² A copy of the docket sheet in the Western District of Texas case is attached as Exhibit A to this Order.

³ A copy of the e-mail from the calendar clerk to chambers, relating counsel's specific request for a trial date later than that contained in the Rule 26(f) Pretrial Order, is attached as Exhibit B to this Order.

⁴ According to Quinn Emanuel's website, which provides lists of its partners by practice area, the firm has over seventy partners and of counsel in the United States practicing in the area

decide which case to undertake, if there is a conflict in trial dates.

In summary, for the reasons set forth above, this court will not move a trial date set at the specific request of counsel,⁵ over seven (7) months in advance of trial. Cree's Motion to Reschedule Trial Date is DENIED. The trial will go forward as scheduled on July 11, 2011.

The Clerk is DIRECTED to send a copy of this Order to counsel for all parties.

IT IS SO ORDERED.

/s/
Rebecca Beach Smith
United States District Judge



REBECCA BEACH SMITH --
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

December 30, 2010

of Intellectual Property Litigation.

⁵ See supra note 3 and accompanying text.